

STAFF REPORT AND PLANNING AND ZONING COMMISSION RECOMMENDATION  
Text Amendment to the *Land Development Code*

TO: City Council  
FROM: Steven Westbay, Community Development Director  
DATE: May 14, 2015  
RE: ZA 15-2, Retail and Medical Marijuana Land Use Regulations

### CODE PROVISIONS

The *Land Development Code (LDC)*, Section 10.3 specifies that a text amendment to the *LDC* be reviewed by the City of Gunnison Planning and Zoning Commission (Commission) at a public hearing after 15 days public notice. The Commission establishes a recommendation to City Council to approve, approve with conditions, deny or remand the application back to the applicant with instructions for modification. City Council shall consider the recommendation of the Commission at a public hearing and shall, by ordinance, approve, deny or remand the application back to the applicant with instructions for modification or additional information.

A Text Amendment may be initiated by City Council, the Planning and Zoning Commission, the Community Development Director, a resident of the city, an owner of a business within the city, or any person who holds a recognized interest in real property within the city.

### APPLICATION

The applicant for this Text Amendment is Steven Westbay, the City of Gunnison Community Development Director. The application proposes to amend Section 2, Zoning Districts and Section 3, Specific Use Regulations to address the location and land use regulations for marijuana establishments.

### HISTORY OVERVIEW

In 2010, electors of the City of Gunnison voted to prohibit the operation of medical marijuana establishments within the City. The City Council then adopted Ordinance 2, Series 2011, prohibiting the establishment of Medical Marijuana Centers, Optional Premises Cultivation Operations and Medical Marijuana-Infused Product Manufacturers within the City of Gunnison.

In 2013, with the passing of the State vote regarding retail marijuana, the City Council, passed Ordinance No. 6, Series 2013, prohibiting the operation of retail marijuana establishments within the City. Since the action of voters in 2010 and the City's action in 2013, regulations regarding the marijuana industry, both medical and retail, have been developed and refined by the State legislature, and members of the public had requested that the City determine whether to continue the prohibition on medical and retail marijuana establishments within the City.

On November 4, 2014, the City of Gunnison put the question to registered electors on whether to allow medical marijuana establishments within the City, whether to allow retail marijuana establishments in the City, and whether the sale of medical or retail marijuana, within the City, would be subject to local taxation.

Voters approved the allowance of medical and retail marijuana establishments within the City limits, as well as taxation on sales of the same, subject to such rules, regulations, limitations and restrictions as may be adopted by City Council. Both the *Colorado Medical Marijuana Code* and the *Colorado Retail Marijuana Code* specifically authorize a local jurisdiction, which is

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going to allow the medical and retail marijuana establishments within its boundaries, to adopt its own time, place and manner restrictions, as well as other local regulations, which rules and regulations may be stricter than those established by the State of Colorado.

### REGULATION CONTENT SECTIONS

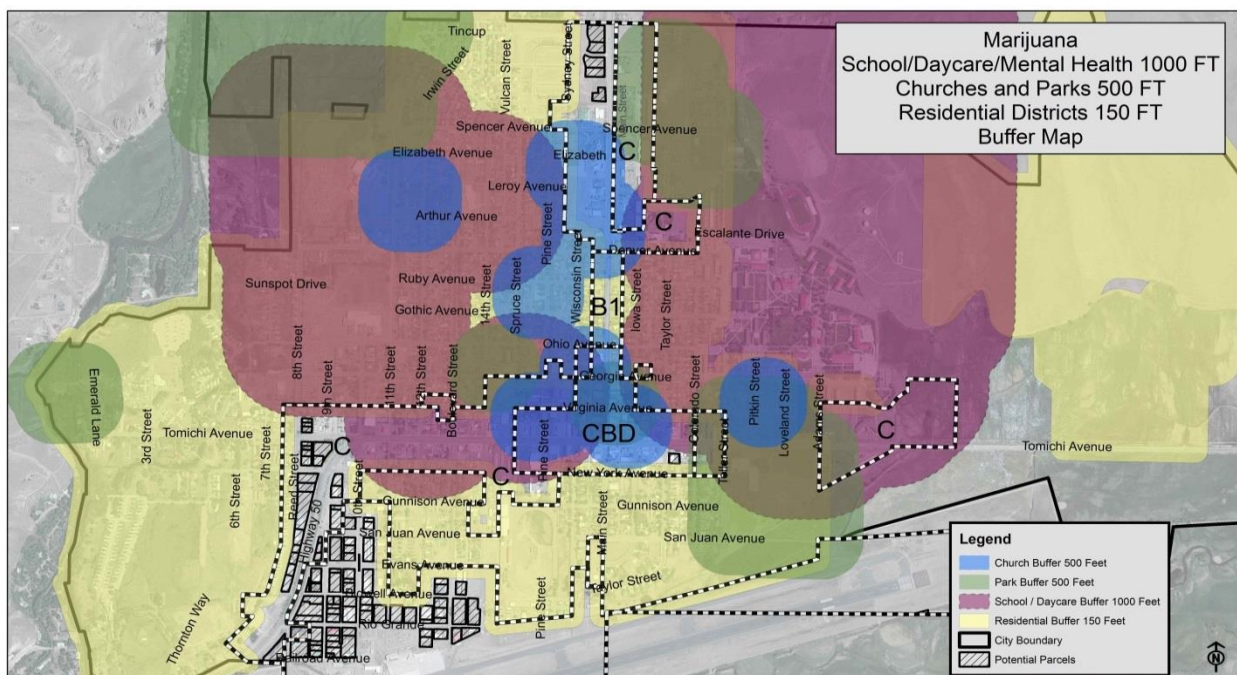
After the approval of the ballot question, City staff started developing an ordinance to address regulatory provisions for medical and recreational marijuana. Regulatory oversight of the new marijuana business market requires amendments to the City Sales and Use Tax Code (Chapter 3.10), Business Regulations (Chapter 8.50), and Technical Codes (Title 14, Building, Mechanical and Fire Codes) of the *City of Gunnison Municipal Code*. Amendments of the *Municipal Code* are reviewed and approved by City Council and are not part of this application.

Amendments to the *City of Gunnison Land Development Code* (LDC) are proposed to address land use regulations for marijuana establishments. Amendments are proposed in Section 2, Zoning Districts, Principal Use Table (Table 2-3) and Section 3, Specific Use Regulations.

### PUBLIC INPUT - KEY TOPICS

Since November 11, 2014, the Commission conducted five work sessions concerning the topic of marijuana regulations. Council has also had several discussions and updates regarding this topic. In the March and April 2015 timeframe, the City hosted two public forums to gather community input and comments. While many topics were broached during these sessions, locational standards for retail establishments, the issue of co-occupancy tenants in a single building, and wastewater discharge were of greatest interest.

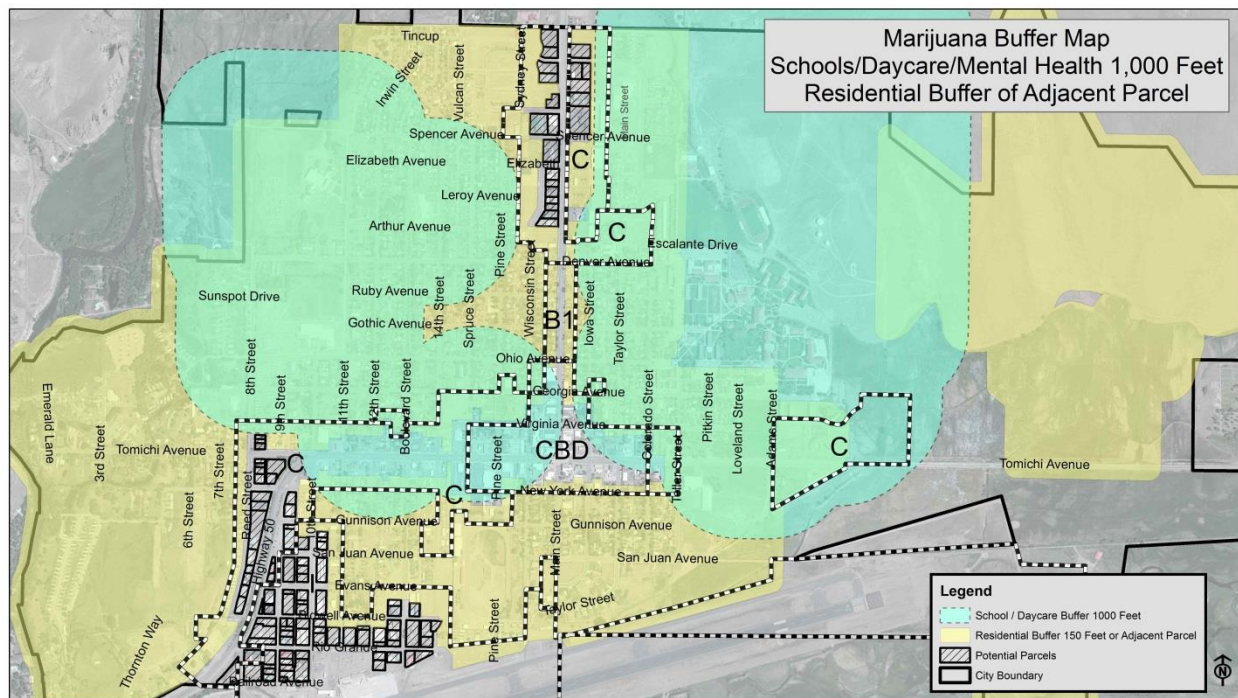
***Use Location and Buffers.*** Early on in the review process the Commission deliberated these topics and the Commission's consensus was to follow state buffer standards (1000' from schools, etc.), apply residential buffer standards, and prohibit retail marijuana establishments in the CBD and B-1 districts. The initial draft buffer map included a 1000 foot buffer for schools, daycare facilities, higher education and mental health; 150 foot buffer from all residential districts; and a 500 foot buffer from parks and churches (see map below). After discussions with Council and



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the Commission, staff drafted the buffer map with alternate church and park buffers of 250 feet and 150 feet.

As previously noted, numerous comments were received during the public workshops, and the individual desires filled a spectrum from limiting establishments to only the Industrial District to allowing marijuana establishments in all districts using a conditional use permit process. Based on comments from the first public workshop, staff revised the buffer map to include the 1,000 foot schools, daycare facilities, higher education and mental health buffer and a residential buffer of the adjacent parcel (see map below).



The second workshop was held with the City Council (and Planning and Zoning Commission) and discussion again focused on the location of marijuana establishments and buffers.

**Co-Tenant Occupancy.** Several public comments focused on a draft proposal to prohibit co-tenant occupancy in buildings with marijuana establishments. A primary concern with co-occupancy was in regard to odors issues affecting tenants occupying a building. Draft regulations were modified to allow shared occupancy in buildings with appropriate mechanical systems that mitigate the potential for odors migrating into adjacent businesses.

**Wastewater Discharge.** Draft regulations also contemplated the oversight of wastewater discharge from non-retail marijuana establishments. One supposition raised was that the proposed regulations singled-out the marijuana industry as a polluter without regard to other industrial discharge sources. In fact, facilities that produce industrial wastewater have in the past, and continue to be, regulated by the City (Utilities Title 12, Section 12.12.040.2). Examples of regulated industries include but are not limited to WSCU, the hospital, car wash facilities, the city shops, and mechanic shops.

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Historically, nutrients and phosphorous discharge were not a high priority, but the Colorado Department of Public Health and Environment is now reviewing these pollution constituents in a more rigorous manner. The Colorado Water Quality Control Commission is reviewing changes to the Regulation #85, *Nutrients Management Control Regulation* (5CCR 1002-85), and amendments could affect the existing water quality permits that the City's wastewater treatment operates under.

A City consulting engineer has recommended that in order to protect the wastewater treatment plant's permit status, the levels for nitrogen discharge be set at .035 pounds per day and phosphorous discharge be set at .015 pounds per day. If anticipated discharge from the licensed facility are quantified to be greater than these thresholds, the marijuana licensed establishment must institute a pretreatment apparatus plan for the facility.

## RECORD CONTENTS

Written correspondence submitted by the public includes the following:

- Letter from Tony Cecere, dated April 12, 2015;
- Letter from Eric Norum, dated April 11, 2015;
- Letter from Robert Drexel, dated April 13, 2015;
- Letter from Matt Schwartz, dated April 14, 2015;
- Information on hydroponics from Merlin Schaefer, dated April 29, 2015; and,
- Workshop (March 18, 2015 and April 7, 2015) comment summary, dated April 21, 2015.

## PROPOSED AMENDMENT

**Section 8. City of Gunnison Land Development Code**, Section 2, Table 2-3, Principal Use Table is hereby amended to read as follows:

TABLE 2-3 PRINCIPAL USE TABLE											
Use Categories	Specific Uses	RESIDENTIAL ZONING DISTRICTS					NON-RESIDENTIAL ZONING DISTRICTS				Use Standards
		R-1	R-1M	R-2	RMU	R-3	B-1	CBD	C	I	
Residential Use Categories (§3.2)											
Household Living	Accessory Dwelling <sup>1</sup>			P	P	P	P	P	P	P	§3.3H
	Duplex dwellings			P	P	P	C		C		§3.3C
	Manufactured homes	P	P	P	P	P	P	C	C		§3.3B
	Mobile home parks					C					§3.3I
	Multi-family dwellings				P	P	C		C		§3.3D
	Single-family dwellings	P	P	P	P	P	P	C	C		§3.3 C
	Townhouses				P	P					§3.3F
	Upper story residential <sup>1</sup>						P	P	P	P	§3.3G

<sup>1</sup> See special allowances in the Use Standards.

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		R-1	R-1M	R-2	RMU	R-3	B-1	CBD	C	I	
	Zero lot line dwellings			P	P	P					§3.3E
Congregate Living	Assisted Living homes	C <sup>2</sup>	C <sup>2</sup>	C <sup>2</sup>	C <sup>2</sup>	C <sup>2</sup>			C <sup>2</sup>		§3.3J
	Nursing home			C	C	C			C		§3.3J
	Rooming and boarding houses, dormitories, fraternities or sororities				C	C					§3.3K
Home Occupation and Home Business	Home Occupation	P	P	P	P	P	P	P	P		§3.3L
	Home Business	C	C	C	C	C	P	P	P		§3.3L
Marijuana	Personal Use of Marijuana	P	P	P	P	P	P	P	P	P	§3.3M
Public, Civic and Institutional Use Categories (§3.4)											
Community Service	Detention Center									P	--
	Mausoleum, columbarium	C	C	C	C	C	C	C	P		--
	Neighborhood or community centers	C	C	C	C	C	P		P		--
	Public garage or shop									P	--
Educational Facilities	School, public or private	C	C	C	C	C	C	C	C		§3.4A
	School, trade or business	C	C	C	C	C	C	C	C	C	
Day Care	Daycare Center			C	C	C		C			§3.5A
	Daycare Home	C	C	P	P	P	P	P	P	C	
	Daycare School			C	C	C	C	C	C	C	
Marijuana-Related Business	Marijuana Club or Vapor Lounge										--
Medical	Hospitals						C		P		--
Parks and Open Space	Parks and recreational facilities	P	P	P	P	P	P	P	P	P	--
Religious Institutions	Churches or places of worship	C	C	C	C	C	C	C	P		§3.5B
Utilities	Major utilities (private only)	C	C	C	C	C	C	C	C	P	--
	Minor utilities	P	P	P	P	P	P	P	P	P	--
Accommodation, Retail, Service - Commercial Use Categories (§3.6)											
Entertainment Event, Major	Auditoriums							C	P	P	--
	Fairgrounds									P	--
Office	Banks and financial institutions						C	P	P		--
	Government offices					C	P	P	P	P	--
	Medical clinic or dental office						P	P	P		--
	Professional offices						P	P	P	C	--
	Radio and television studios						P	P	P		--
Parking, Commercial	Commercial parking lots and garages							C	P	P	--
Retail Sales, Rental and Service, Sales-Oriented	Art Galleries						P	P	P		--
	Auto sales and rental								P	P	--

<sup>2</sup> Conditional Use is limited to not more than eight developmentally disabled or eight mentally ill persons pursuant to CRS §31-23-304(4).

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Use Categories	Specific Uses	RESIDENTIAL ZONING DISTRICTS					NON-RESIDENTIAL ZONING DISTRICTS				Use Standards	
		R-1	R-1M	R-2	RMU	R-3	B-1	CBD	C	I		
	Automotive Supplies								P	P	--	
	Book stores						P	P	P	C	--	
	Convenience Stores, without gas pumps							P	P	P	--	
	Drive-in						C	C	C	C	§3.12B	
	Furniture and Appliance Stores							P	P	P	--	
	Greenhouse or nursery						C	C	P	P	--	
	Lumber and building material sales								C	P	--	
	Outside Sales or Display							C	P	P	§3.7 B.3.	
	Recreational Vehicle Sales								P	P	--	
	Retail Grocery Store						C	C	P	C	--	
Retail Sales and Service, Personal Service-Oriented	Athletic or Health Clubs						P	P	P	P	--	
	Barber and beauty shops						P	P	P		--	
	Drive-in						C	C	C	C	§3.12.B.	
	Dry cleaning drop-off/pick-up						P	P	P	P	--	
	Funeral homes and mortuaries							C	P	P	--	
	Kennels								C	P	--	
	Laundromats					C			P	P	--	
	Photography studios						P	P	P	P	--	
	Veterinary clinic								P	P	--	
Marijuana	Retail Marijuana								P	C	§3.15	
	Medical Marijuana Centers								P	C	§3.15	
	Marijuana Club										--	
Accommodations	Bed and breakfasts				C	C	C	C			§3.7 A.1.	
	Hostels				C	C	C	C	P		§3.7 A.2.	
	Hotels and motels							C	P		§3.7 A.3.	
	RV Parks					C			C	C	§3.7.A.4.	
Retail Sales and Service, Eating and Drinking –Oriented	Bars and taverns							P	P	C	--	
	Coffee shop/bakery						C	P	P	P	--	
	Drive-in							C	C	C	§3.12 B.	
	Restaurants						P	P	P	C	--	
Retail Sales and Service, Entertainment-Oriented	Private lodges and clubs							P	P	C	--	
	Recreation, indoor							P	P	C	--	
	Theater							P	P	P	--	
Retail Sales and Service, Repair-Oriented	Appliance repair							C	P	P	--	
	Bicycle repair/rental						P	P	P	P	--	
	Locksmith						C	P	P	P	--	
Vehicle Services, Limited	Car washes								P	P	--	
	Convenience stores, with gas pumps							C	P	P	§3.7 B.1.	



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		R-1	R-1M	R-2	RMU	R-3	B-1	CBD	C	I		
	Service stations								P	P	--	
Industrial Use Categories (§3.8)												
Industrial Sales and Service	Agricultural implement sales/service								P	P	--	
	Building and heating contractors								P	P	--	
	Chemicals or explosives manufacture									C	--	
	Dry cleaning/dyeing plant							C	P	P	--	
	Feed and grain sales								P	P	--	
	Manufactured home sales/service								C	P	--	
	Repair and service of industrial vehicles								C	P	--	
	Research laboratories								C	P	--	
	Salvage or wrecking yards, or junkyards									C	--	
	Sale, rental, leasing of heavy equipment								C	P	--	
	Truck Stop								C	P	--	
Manufacturing and Production	Catering Services						C	P	P	P	--	
	Concrete or redi-mix plant									P	--	
	Greenhouse/nursery							C	P	P	--	
	Industrial Hemp Production									P	--	
	Manufacture or assembly of machinery, equipment, instruments								C	P	--	
	Meat Processing									C	--	
	Printing, publishing and lithography						C	P	P	P	--	
	Woodworking and cabinet shops								C	P	--	
Marijuana Manufacturing and Production	Marijuana manufacturing									P	§3.15	
	Medical marijuana-infused products manufacturing									P	§3.15	
	Marijuana cultivation									P	§3.15	
	Medical marijuana optional premises cultivation operation									P	§3.15	
	Marijuana testing facility								P	P	§3.15	
Self-storage Warehouse	Mini-warehouses and mini-storage									P	--	
Vehicle Repair	Auto body shops								C	P	§3.7.B.2	
	Auto, truck and boat repair								C	P	§3.7.B.2	
	Quick lube service								P	P	§3.7.B.2	
Warehouse and Freight Movement	Air cargo terminal									P	--	
	Outdoor storage, general								C	P	§3.9B.	
	Post Office							P	P	P	--	
	Recreational vehicle storage								C	P	§3.9B.	
	Utility service yards or garages								C	P	§3.9B.	

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		R-1	R-1M	R-2	RMU	R-3	B-1	CBD	C	I		
	Warehouses and truck terminals									P	§3.9B.	
Waste-Related	Transfer stations									P	--	
	Recycling centers									P	--	
Wholesale Sales	Mail order houses						P		P	P	--	
	Wholesalers of food, clothing, and parts								C	P	--	
Other Uses Categories §3.10												
Adult entertainment	Sexually oriented businesses									C	§3.10 C.	
Alternative Energy	Solar Voltaic and Wind Turbines	C	C	C	C	C	C	C	C	C	§3.11 D.	
Aviation and Surface Transportation	Airports and related facilities, public									P	§3.11 A.	
Mining	Processing of aggregate mineral or other subsurface resources									C	§3.11 E.	
	Asphalt Batch Plant									C	§3.11 E.	
Telecommunications Facilities	Telecommunications facilities and towers							C	C	P	§3.11 B.	
Temporary Commercial Activity	General retail sales or other commercial use operated outside of a building on a seasonal basis.							C	C	C	§3.13	

**Section 9. City of Gunnison Land Development Code**, Section 3, is hereby amended to add Section 3.14 Marijuana Use Categories and Section 3.15 Marijuana Use Standards as follows:

**3.14 Marijuana Use Categories**

- A. Retail Marijuana and Medical Marijuana Center Standards (retail marijuana establishments).
1. Characteristics. A licensed retail marijuana sales facility is authorized to sell retail or medical marijuana or manufactured marijuana products.
  2. Accessory Uses. Accessory uses may include offices, secured indoor storage areas and sale of marijuana accessories.
  3. Examples. Retail marijuana stores and medical marijuana centers are licensed in compliance with all local and state regulations. Retail marijuana establishments sell marijuana and marijuana products manufactured for consumption to the general public, under the provisions of state and local government regulations.



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Facilities have restricted access areas designated for merchandise displays and conducting transactions, and limited access areas which are prohibited for public access. Generally, retail establishments are classified in the *International Building Code* as Business Group M, Mercantile.

B. Marijuana Manufacturing and Medical Marijuana-Infused Products Manufacturing (marijuana product manufacturing establishment).

1. Characteristics. Manufacturing and production facilities serve to prepare, manufacture and package marijuana byproducts. Typically, the manufacturing process includes the distillation of plant materials. The distilled byproducts are generally oils, tinctures, and edible products made from the distilled product. Products may be any part of the plant or a finished product for the wholesale market or other facilities. Goods are not sold on the site.
2. Accessory Uses. Accessory uses may include offices, warehouses, truck fleets and secured indoor storage areas.
3. Examples. Marijuana manufacturing and medical marijuana-infused products manufacturing are licensed in compliance with all local and state regulations. Marijuana product manufacturing establishments process marijuana into various consumable products, under the provisions of state and local government regulations. Processes often involve distillation of marijuana using various types of equipment. Commercial kitchen equipment meeting the standards of the Colorado Department of Public Health and Environment are required. Facilities are limited areas for which public access is prohibited. Generally, Marijuana product manufacturing establishments are classified in the *International Building Code* as Factory Industrial, F-1, Moderate Hazard Occupancy.

C. Marijuana Cultivation and Medical Marijuana Optional Premises Cultivation Operation (licensed marijuana cultivation establishment).

1. Characteristics. Marijuana cultivation incorporates facilities with specific climate controls; ventilation and mechanical systems; equipment for watering and fertilizing plants; and storage of various gases, materials, and equipment required for the growing of marijuana plants. Cultivation facilities cannot cohabitate with any other uses not licensed and permitted as a marijuana establishment.
2. Accessory Uses. Accessory uses may include offices, warehouses, truck fleets and fully enclosed and secured storage facilities. Open storage yards are not permitted.
3. Examples. Marijuana cultivation establishments are licensed in compliance with all local and state regulations. Licensed marijuana cultivation establishments grow and produce marijuana. There are numerous process types that may be used the cultivation of marijuana. Processes may include the injection of compressed gas

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(generally Carbon dioxide) or using nutrient rich media to enhance plant growth. Primary life-safety concerns include depleted oxygen levels within the facilities, wastewater discharges with elevated nutrient levels from fertilizers, phosphates, odor nuisances, and wastewater discharge of pesticides and other constituents which affect the state and federal licensing compliance provisions related to the City's sewer system and sewer plant. Public access to facilities are prohibited. Generally, licensed marijuana cultivation establishments are classified in the *International Building Code* as Factory Industrial, F-1, Moderate Hazard Occupancy.

D. Testing Facilities

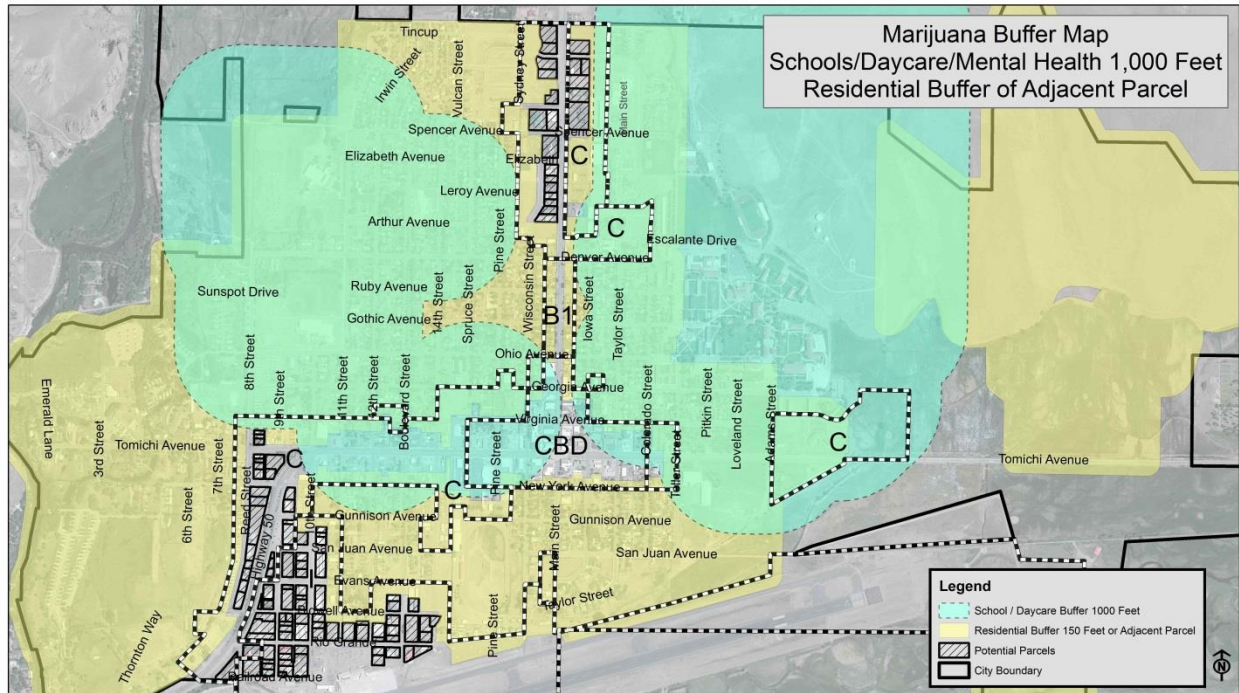
1. Characteristics. Testing facilities are laboratory facilities licensed to analyze and certify the safety and potency of marijuana.
2. Accessory Uses. Accessory uses may include offices, and secured storage areas.
3. Examples. Marijuana testing facilities are independent of all other licensed marijuana establishments staffed with technicians and equipped with various types of instruments and laboratory equipment. Generally, marijuana testing establishments are classified in the *International Building Code* as Business Group B, Laboratories (Testing and Research).

3.15 Marijuana Use Standards

- A. Site Development Application Required. A Site Development Application is required to be submitted and approved by the Community Development Director.  
**Exception.** Retail Establishments (Medical Marijuana Center and Retail Marijuana Stores) proposed to be located in the city's Industrial District zone, are subject to Conditional Use approval pursuant to Table 2-3 (Principal Use Table).
- B. General Compliance Criteria and Standards. All city licensed marijuana establishments shall meet the following minimum criteria and standards.
1. Marijuana establishments shall not be located within 1000 feet of a public school; private, charter school or institutions of higher education; daycare school, center, or home; and mental health facilities. The measure is established as a straight line drawn between any points of the respective property boundaries and is designated by the *Marijuana Establishment Buffer Map* adopted by the City Council. If any portion of deeded real property is intersected in any manner by a designated buffer boundary the entire deeded property is prohibited from being licensed as a marijuana establishment.

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2. Licensed marijuana establishments shall not be located on real property that fronts, abuts or is directly adjacent to any Residential District zone (R-1,R-1M, R-2, RMU, R-3, PUD-Residential).



3. Licensed Marijuana establishments are subject the district zone location standards as set forth in Table 2-3 (Principal Use Table) of this *LDC*.
4. Marijuana establishment signage shall include only the registered or trade name, address and phone number of the marijuana establishment. Display graphic/images of any portion of a marijuana plant on signage associated with marijuana establishments shall be prohibited. Sign standards for marijuana establishments shall comply with all provisions of this *LDC* or other applicable city laws and regulations.
5. Except for permanent signage as permitted in Section 4.8, Signs of this *LDC*, it shall be unlawful for any person licensed by the City of Gunnison, or any other person to advertise any marijuana or retail marijuana product anywhere in the city where the advertisement is visible to members of the public from any street, sidewalk, park or other public place, including advertising utilizing any of the following media: billboard, Off-Premise Sign, or other outdoor general advertising device as defined in this *LDC*; any sign mounted on a vehicle, any hand-held or other portable sign; or any handbill, leaflet or flier directly handed to a person in a public place, left upon a motor vehicle or posted upon any public or private property. The prohibition set forth in this paragraph shall not apply to:

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- a. Any sign located on the same deeded parcel as a licensed marijuana establishment which exists solely for the purpose of identifying the location of the marijuana establishment;
  - b. Any advertisement contained within a newspaper, magazine or other periodical of general circulation within the city or on the internet;
  - c. Any products marked with the name logo of the licensed marijuana establishment, including wearable or non-consumable merchandise, packaging in which marijuana is sold, or on recreational marijuana accessories sold; and,
  - d. Advertising that is purely incidental to sponsorship of a charitable event by the licensed marijuana establishment.
6. Licensed marijuana establishments shall comply with all provisions, standards and regulations of this LDC.
  7. Licensed marijuana establishments shall be served by city water, wastewater, and electrical utility services and shall comply with all provisions, standards and regulations specified in the Utilities (Title 12), *City of Gunnison Municipal Code*.
  8. All licensed marijuana establishments shall comply with all applicable requirements of Colorado State Law.
  9. Licensed marijuana establishments shall comply with Code of Colorado Regulations, Medical Use of Marijuana and the Code of Colorado Regulations, Retail Marijuana Code.
  10. Marijuana-related odors shall not be discharged or emanate from any licensed marijuana establishment. Licensed marijuana establishments involved in the sale, transfer, packaging, processing, cultivation, production, extraction or destruction of plants and their parts, devices, designed for the use of marijuana and marijuana products, or other marijuana related operations and activities, shall provide an approved source capture system capable of removing particulate and odors as required to achieve levels that do not constitute a nuisance to adjacent occupants, structures and properties.
  11. Building Standards. Licensed marijuana establishments shall be located in buildings that comply with the International Code Council codes adopted the City and in effect at the time of the license application submittal.
  12. Hours of Operation. Licensed marijuana establishments shall not sell, distribute, or initiate the transport of marijuana or marijuana products at any time other than between the hours of 8:00 am and 8:00 pm, Mountain Standard Time, Monday through Sunday.

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13. Director or designee shall perform inspections of all licensed marijuana establishments at their discretion. Inspections shall include review of operations and maintenance records.
- C. Retail Marijuana and Medical Marijuana Center Standards (retail marijuana establishments). Licensed retail marijuana establishments shall comply with the general criteria and standards (Section 3.15 B.) in addition to the following standards:
1. Building Standards. Licensed retail establishments shall be located in buildings that comply with occupancy standards established in the International Code Council codes adopted by the City and in effect at the time of the license application submittal.
  2. Licensed retail establishments shall be located on lots in buildings that comply with the regulations in the *LDC* including, but not limited to, landscape standards, buffer standards, lighting standards, screening standards and parking standards.
  3. Store front window glazing shall not be painted or covered with opaque material, but non-reflective tinted glazing is permitted on the building fenestration.
  4. Off-premises retail marijuana establishment storage facilities are prohibited.
- D. Retail Marijuana Products Manufacturing and Medical Marijuana-Infused Products Manufacturing (marijuana product manufacturing establishment). Licensed marijuana product manufacturing establishments shall comply with the general criteria and standards (Section 3.15 B.) in addition to the following standards:
1. Building Standards. Licensed marijuana product manufacturing establishments shall be located in buildings that comply with the International Code Council codes adopted the City and in effect at the time of the license application submittal.
  2. Equipment used in the licensed marijuana product manufacturing establishment shall be tested and approved by Underwriters Laboratories (UL) or equivalent standards testing laboratory. In the absence of a testing laboratory certification, the design and construction of said equipment may be by a mechanical engineer registered and holding a current license in the State of Colorado. In the case where equipment is approved by a licensed engineer, documents pertaining to specific material specifications, pressure, temperature thresholds, specific operating procedures, and other related details shall be provided in a report signed and stamped by the engineer of record.

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3. Licensed marijuana product manufacturing establishments shall, if necessary, be equipped with a commercial kitchen that complies with all related standards, operation procedures, and food service protection provisions promulgated by the Marijuana Product Manufacturing Facilities standards (R 600 Series) of the Colorado Department of Permanent Rules Related to Retail Marijuana Code, as they may be amended.

Licensed marijuana product manufacturing establishments shall, on an annual basis, be inspected. The Community Development Director shall be provided an inspection report demonstrating compliance with established standards, operation procedures and food service protection provisions. Said report shall be the product of a professional who is certified by the American Board of Industrial Hygiene. The licensed manufacturing establishment shall pay all costs for related inspections and reports. The Community Development Director may order an industrial hygiene inspection without notice, and all costs for city ordered inspections and reports shall be the responsibility of the licensed manufacturing establishment.

4. Toxic Pollutants and Hazardous Waste. Licensed marijuana product manufacturing establishments shall, on an annual basis, provide the Gunnison Fire Marshal a list of hazardous material types and quantities used. Disposal of hazardous and chemical waste must be conducted in a manner consistent with federal, state and local laws pertaining to the proper disposal of related materials.

5. Sewer System Discharge.

- a. Wastewater discharged from a marijuana licensed product manufacturing establishment is subject to city regulations (Municipal Code, 12.10.040.2, et al.) established to ensure that industrial wastewater discharge complies with state and federal regulations prior to the actual connection to the city's wastewater facilities.
- b. Testing Requirements. The Public Works Director may order a wastewater discharge inspection without notice, and all costs for city ordered inspections and reports shall be the responsibility of the licensed marijuana product manufacturing establishment. The licensed marijuana product manufacturing establishment shall pay all costs for related inspections and reports established by an independent testing laboratory acceptable to the Public Works Director.

- E. Marijuana Cultivation and Medical Marijuana Optional Premises Cultivation Operation (licensed marijuana cultivation establishment). Licensed marijuana cultivation establishments shall comply with the general criteria and standards (Section 3.15 B.) in addition to the following standards:

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1. Outdoor cultivation of marijuana is prohibited.
2. Equipment used in the licensed marijuana cultivation establishment shall be tested and approved by Underwriters Laboratories (UL) or equivalent standards testing laboratory. In the absence of a testing laboratory certification, the design and construction of said equipment may be by a mechanical engineer registered and holding a current license in the State of Colorado. In the case where equipment is approved by a licensed engineer, documents pertaining to specific material specifications, pressure, temperature thresholds, specific operating procedures and other related details shall be provided in a report signed and stamped by the engineer of record.
3. Toxic Pollutants and Hazardous Waste. Licensed marijuana cultivation establishments shall, on an annual basis, provide the Gunnison Fire Marshal a list of hazardous material types and quantities used. Disposal of hazardous and chemical waste must be conducted in a manner consistent with federal, state and local laws pertaining to the proper disposal of related materials.
4. Sewer System Discharge. Wastewater discharged from a licensed marijuana cultivation establishment is subject to city regulations (Municipal Code, 12.10.040.2, et al.) established to ensure that industrial wastewater discharge complies with state and federal regulations prior to the actual connection to the city's wastewater facilities.
  - a. The applicant for a licensed marijuana cultivation establishment shall provide an Industrial Pretreatment Plan developed by a licensed engineer in the state of Colorado. The Industrial Pre-Treatment Plan shall be included with the Site Development Plan and shall provide the following specific information:
    - i. A narrative and graphic plan description of the type of irrigation system to be used.
    - ii. An estimate of the quantity of total discharge into the wastewater collection system in gallons per day.
    - iii. The quantity of phosphorous and nitrogen in the discharge, to be established in pounds per day.
  - b. Discharge Conformance Standards. Licensed marijuana cultivation establishments shall conform to the Colorado Department of Public Health and Environment –Water Quality Control Commission, *Regulation #85, Nutrients Management Control Regulation* (5CCR 1002-85), nutrient discharge limitation, and subject to change to conform to future nutrient discharge limitations promulgated by the state of Colorado. Nutrient discharge shall not exceed the following levels: Total phosphorous 0.015



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pounds per day; Total nitrogen 0.088 pounds per day. Facilities with projected discharges exceed this threshold are subject to demonstrating compliance the *City of Gunnison Municipal Code*, Section 12.10.040.2 (Interceptors and Pretreatment).

- c. Testing Requirements. The Public Works Director may order a wastewater discharge inspection without notice, and all costs for city ordered inspections and reports shall be the responsibility of the licensed marijuana cultivation establishment. The licensed marijuana cultivation establishment shall pay all costs for related inspections and reports established by an independent testing laboratory acceptable to the Public Works Director.

F. Marijuana Testing Facilities. A licensed Marijuana Testing Facility shall comply with the general criteria and standards (Section 3.15 B.).

**DEPARTMENTAL COMMENTS**

Building Official: No issue.

Fire Marshal: No issue.

Parks and Recreation Department: No issue.

Police Department: No issue.

Public Works Director: No issue.

City Engineer: No issue.

Water and Sewer Superintendent: No issue.

Electric Superintendent: No issue.

City Attorney, Kathy Fogo: No issue.

**STAFF OBSERVATIONS**

1. The Text Amendment application proposes amendments to Section 2, Zoning Districts, Principal Use Table (Table 2-3) and Section 3, Specific Use Regulations within the *Land Development Code*.
2. On November 4, 2014, the City of Gunnison put the question to registered electors on whether to allow medical marijuana establishments within the City, whether to allow retail marijuana establishments in the City, and whether to apply a local tax on the sale of medical or retail marijuana within the City.
3. Voters approved the allowance of medical and retail marijuana establishments within the City limits, as well as taxation on sales of the same, subject to such rules, regulations, limitations and restrictions as may be adopted by City Council.
4. The City has the power and authority to adopt regulations for licensing marijuana establishments that are more restrictive than those rules adopted by Colorado Revised Statutes.

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5. Marijuana uses include Retail Marijuana and Medical Marijuana Centers; Marijuana Manufacturing and Medical Marijuana-Infused Products Manufacturing; Marijuana Cultivation and Medical Marijuana Optional Premises Cultivation; and, Marijuana Testing Facilities.
6. During the March and April 2015 timeframe, the City hosted two public forums to gather community input and comments. A wide spectrum of viewpoints exists, based on comments from community members. They range from allowing uses only in the Industrial District zone to not regulating the industry in any manner. Topics broached during these sessions were varied in content but, locational standards for retail establishments, limiting the number of licenses in the city, issues associated with co-occupancy tenants in a single building, and wastewater discharge were some of the topics of greatest interest.
7. Regulatory oversight of the new marijuana business market requires amendments to the City Sales and Use Tax Code (Chapter 3.10), Business Regulations (Chapter 8.50), and Technical Codes (Title 14, Building, Mechanical and Fire Codes) of the *City of Gunnison Municipal Code*. Amendments of the *Municipal Code* are reviewed and approved by City Council and are not part of this application.
8. Land use regulations for all marijuana establishments include location and buffer standards, signage standards, utility compliance provisions, odor mitigation requirements, building compliance requirements, requirements limiting the hours of operation, and provisions for inspections. Additional standards are required for each marijuana establishment type (i.e. equipment, hazardous waste, sewer system discharge, etc.).
9. The proposed amendments represent a balanced approach for addressing the variety of community viewpoints expressed during the public forums concerning the topics of this emerging industry.
10. The Community Development Director believes that the proposed amendments to the *City of Gunnison Land Development Code* protect the health, safety and welfare of the community and the Director recommends approval of the amendments as presented herein.

**REVIEW STANDARDS FOR TEXT AMENDMENTS**

*LDC* Section 6.8 C., states that “....an application that fails to comply with any applicable review standard shall be denied.” The *LDC* Section 10.5 states that “...an application for an amendment to the text of this *Land Development Code* shall comply with the following four standards:”

**A. Consistent with Purposes.** The proposed amendment shall be consistent with the purposes of this *Land Development Code*.

**No Conflict.** Purposes of the *LDC* are cited in Section 15.10.030 and include the following headings:

1. *Establish Development Standards* for the review of all proposed development in the City.
- 2) *Protect Quality of Life* by promoting the community’s general health, safety and welfare.
- 3) *Establish Review Process* that is clear, consistent, predictable and efficient.

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- 4) *Provide for Orderly Development* of the City that is well-ordered and safe.
- 5) *Conserve Property Values* and respect interests of property owners and citizens.

**B. No Conflict with Other Provisions.** The proposed amendment shall not conflict with any other applicable provisions of this *Land Development Code*, or shall repeal or amend provisions of this *Land Development Code* which are inconsistent, unreasonable or out-of-date.

**No Conflict:** The proposed text amendment does not conflict with any sections of the *LDC*.

**C. Consistent with *Master Plan*.** The proposed amendment shall be consistent with the *Master Plan*, or shall implement a new portion of the *Master Plan*, or shall implement portions of the *Master Plan* which have proven difficult to achieve under the existing provisions of this *Land Development Code*.

**No Conflict:** The proposed text amendment is consistent with the *City of Gunnison Master Plan*.

Land Use Goal. “Residential, commercial and industrial land uses are appropriately located.”

Economics Goal. “A diversified local economy will support the economic and employment needs of residents and account for social character, land use patterns...”

Utilities Goal. “The City will efficiently deliver its public utilities and continue to be fiscally responsible in the construction of high quality public infrastructure, making forward-looking decisions that maintain low operational, maintenance and energy costs.”

**D. Public Health, Safety and Welfare.** The proposed amendment shall preserve the public health, safety, general welfare and environment and contribute to the orderly development of the City.

**No Conflict:** The proposed amendment is intended to preserve the public health, safety and general welfare of the community.

## RECOMMENDATION

During the Planning and Zoning Commission meeting held on May 13, 2015, Commissioner Niemeyer moved, Commissioner Cave seconded, and the Planning and Zoning Commission voted to recommend APPROVAL, to City Council of Zoning Amendment application ZA 15-2, for a Text Amendment to Section 2, Zoning Districts and Section 3, Specific Use Regulations regarding medical and retail marijuana regulations within the *LDC*, based on the following findings of fact:

1. The Planning and Zoning Commission finds that the record of this action includes the application contents on file with the City of Gunnison; all comments entered into the Public Hearing record; and provisions of the *City of Gunnison Land Development Code* and the *City of Gunnison Master Plan*.
2. The Planning and Zoning Commission finds that the proposed Text Amendment amends Section 2, Zoning Districts and Section 3, Specific Use Regulations within the *Land Development Code*.
3. The Planning and Zoning Commission finds that on November 4, 2014, the City of Gunnison put the question to registered electors on whether to allow medical marijuana establishments within the City, whether to allow retail marijuana establishments in the

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City, and whether to apply a local tax to the sale of medical or retail marijuana within the City.

4. The Planning and Zoning Commission finds that voters approved the allowance of medical and retail marijuana establishments within the City limits, as well as taxation on the sales of the same, subject to such rules, regulations, limitations and restrictions as may be adopted by City Council.
5. The Planning and Zoning Commission finds that the City has the power and authority to adopt Articles pursuant to:
  - a. The Colorado Medical Marijuana Code, C.R.S., Title 12, Article 43.3;
  - b. The Colorado Retail Marijuana Code, C.R.S. Title 12, Article 43.4;
  - c. The authority granted to home rule municipalities by Article XX of the Colorado Constitution;
  - d. The powers contained in the City of Gunnison Home Rule Charter;
  - e. The Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.;
  - f. Part 3 of Article 23 of Title 31, C.R.S., (concerning municipal zoning powers);
  - g. Section 31-15-103, C.R.S., (concerning municipal police powers);
  - h. Section 31-15-401, C.R.S., (concerning municipal police powers); and,
  - i. Section 31-15-501, C.R.S., (concerning municipal authority to regulate businesses).
9. The Planning and Zoning Commission finds that marijuana uses include Retail Marijuana and Medical Marijuana Centers; Marijuana Manufacturing and Medical Marijuana-Infused Products Manufacturing; Marijuana Cultivation and Medical Marijuana Optional Premises Cultivation; and, Marijuana Testing Facilities.
10. The Planning and Zoning Commission finds that a wide variety of community viewpoints were expressed during the public forums conducted in March and April 2015, and the proposed text amendments represent a balanced compilation of standards that protect the community's best interests.
11. The Planning and Zoning Commission finds that land use regulations for all marijuana establishments include location and buffer standards, signage, utilities, odors, building standards, hours of operation and inspections. The Planning and Zoning Commission further finds that additional standards are required for each marijuana establishment type (i.e. equipment, hazardous waste, sewer system discharge, etc.).
12. The Planning and Zoning Commission finds that based on the record of the application proceedings, approval of this Text Amendment protects the community's health, safety and welfare.